

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:15-CR-77-BO

UNITED STATES OF AMERICA

v.

GEOFFREY K. MONTAGUE

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ORDER


This cause comes before the Court on a motion for specific performance filed by defendant Geoffrey Montague. The government has responded in opposition to the motion, Montague has replied, and the matter is ripe for ruling.

In his motion, Montague seeks specific performance of the government's obligations under the plea agreement. Specifically, Montague contends that the government failed to request from the Court an appropriately reduced sentence from the calculated advisory sentencing guidelines range. Montague seeks vacatur of his current sentence and resentencing to a term of imprisonment of twelve months and one day.

The relief which Montague seeks is that which would result from a successful motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Thus, the Court NOTIFIES Montague of its intent to construe his motion for specific performance as a motion pursuant to 28 U.S.C. § 2255. *Castro v. United States*, 540 U.S. 375, 377 (2003). The Court further WARNS Montague of the effects of filing a motion pursuant to § 2255, including the restrictions on filing second or successive § 2255 motions, and advises him as to the requirements of § 2255.

If Montague does not wish his motion to be construed as a motion pursuant to 28 U.S.C. § 2255, he must withdraw or sufficiently amend his motion not later than December 1, 2017. Should Montague wish to proceed with a motion under 28 U.S.C. § 2255, he shall return the appropriate forms to this Court not later than December 1, 2017. The clerk is DIRECTED to provide defendant with the appropriate forms for filing a § 2255 motion should he choose to do so. Failure to respond to this order shall result in denial of the motion for specific performance without prejudice.

SO ORDERED, this 31 day of October, 2017.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE